> "In other jurisdictions (which include the Federated Malay States) the judgment or execution cannot be registered unless there is some land registered in the name of the debtor against which to register it."

Kerr on the Australian Lands Titles System has also been referred to. At page 321 is the following:—

> "It is conceived, however, that when the interest of a *cestui que trust* (not appearing on the register book) is taken in execution, no entry of a writ of execution can be made upon the title of the registered proprietor (trustee). After sale the purchaser from the Sheriff could lodge an ordinary caveat as a person beneficially entitled under a will or settlement, as the case may be."

These two references support the decision at which I have arrived independently.

The answer to the question put by the Registrar of Titles is that a prohibitory order cannot be registered in respect of the beneficial interest of a person whose name is not on the register.

Order accordingly.

[ORIGINAL CIVIL JURISDICTION]
THOMAS, C.J.
September 16, 1935.

A. S. K. SELVADURAY.....Plaintiff.

v.

MAHMOOD BIN TAWAKOL.....Defendant.

[SELANGOR CIVIL APPLICATION No. 22 of 1935]

The Land Code, 1926, section 134—Meaning of the word "Court" therein—Powers of the Court of a Magistrate under the Land Code, 1926.

The intention of the Land Code, 1926, is that it shall be administered by the Supreme Court except when it is otherwise specifically stated. Therefore the Court of a First Class Magistrate is not empowered to order the sale of immoveable property under sub-section 134(i) of the Land Code, 1926.

Plaintiff in person.

Defendant in person.

Cur. Ad. Vult.

THOMAS, C.J.—This is a reference by the Magistrate of Klang under section 586 of the Civil Procedure Code.

The statement of facts drawn up under that section shows that in a suit brought in the Klang Magistrate's Court the prayer in the plaint asked for judgment for $176 due on a promissory note, interest and costs, and also for an immediate order for the sale of land the title deeds of which had been lodged as collateral security. A caveat had previously been lodged at the Land Office, Klang, and a lien had thereby been created. Judgment was entered for the plaintiff for the sum claimed, but the learned Magistrate was not satisfied that he had the power to make the order for sale asked for, and accordingly has submitted the question for the decision of this Court.

Sub-section 134(i) of the Land Code is as follows:—

> "When a lien is intended to be created over any land the proprietor may deposit his grant, lease of State land, certificate of title or extract from the mukim register, and the person with whom the same has been deposited may present a caveat. Upon registration of the caveat the lien shall be created. When the holder of such lien has obtained a judgment of Court for the actual sum due, he shall be entitled to apply for and obtain forthwith an order for the sale of the land."

The Enactment provides no definition of the word 'Court.' There is a definition of the words 'the Court' stating that they refer to the Supreme Court. The use of the word 'Court' would therefore indicate that the judgment is not limited to one given by the Supreme Court, but would include a judgment given by a subordinate Court.

The section goes on to give a liberty to apply, but does not state to what Court the application should be made. It might of course be argued that inferentially the application should be made to the Court giving the judgment. Such an interpretation would necessitate the reading into the section after the words 'entitled to apply' some such words as 'to the Court from which the judgment has been obtained.' But the intention of the whole Enactment is that it shall be administered by the Supreme Court except when it is otherwise specifically stated. This is particularly noticeable in section 108 which relates to attachments by order of the Court, an amending section to which only extended the words 'the Court' to mean the Court of a Magistrate of the First Class (see section 5 of Enactment No. 22 of 1930). But if under section 134 the Court from which the judgment had been obtained had the power to make an order for sale, then a subordinate Court other than one of a Magistrate of the First Class would be able to make the order. In other words the powers of the Magistrates' Courts would be greater in this respect than with regard to attachments (see also section 243 of the Civil Procedure Code). Moreover, should any question arise as to the caveat, it would have to be dealt with by the Supreme Court (see Part XIII Land Code, 1926).

I conclude that in the absence of any specific statement as to what Court the application should be made, the Supreme Court is intended. The answer to the question submitted by the learned Magistrate is that the Court of a First Class Magistrate is not empowered to order the sale of immoveable property under section 134 (i) of the Land Code, 1926. The parties appeared in person and I understand that there are no costs. Accordingly I order no costs to either party.